

# WEST VIRGINIA

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*DEPARTMENT OF COMMERCE  
CABINET SECRETARY*

**DAVID W. MULLINS**

*COMMISSIONER OF  
LABOR*



# Annual Report FY 2010

West Virginia Division of Labor  
121  
Years of Service  
1889 – 2010

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# I. OVERVIEW OF DIVISION OF LABOR

## A. MISSION STATEMENT

The mission of the Division of Labor, when created in 1889, was to “protect the lives and health, and to promote the prosperity of workers in West Virginia”. Though the scope of the Division of Labor’s statutory mandates has increased in its one hundred twenty year history, this mission still remains at the root of the Division’s activity.

### **The Division of Labor protects the lives and health of West Virginians by:**

- (1) Providing, without charge, safety consultations to employers to help them provide a safer workplace for their employees;
- (2) Enforcing State safety laws in areas where there are no federal standards;
- (3) Conducting an annual occupational injury and illness survey to identify the severity of risk associated with various kinds of employment;
- (4) Enforcing child labor laws prohibiting working children hours that would interfere with school or health, or working in hazardous areas, or working unreasonably young age;
- (5) Supervising the inspection of all boilers operating above a pressure of fifteen (15) pounds per square inch;
- (6) Enforcing federal construction and safety standards for manufactured homes;
- (7) Enforcing safety standards for amusement rides and amusement attractions;
- (8) Enforcing the Elevator Safety Act of West Virginia;
- (9) Enforcing the overtime regulations for employers who work their employees over 40 hours in a workweek;
- (10) Administering the Parental Leave Act;
- (11) Enforcing the provision of the Crane Operator Certification Act.
- (12) Enforcing the Nurse Overtime and Patient Safety Act

### **The Division of Labor promotes prosperity for West Virginians by:**

- (1) Ensuring a minimum hourly wage is paid to employees;
- (2) Enforcing laws requiring that construction employees working under public improvement

contracts are paid the prevailing wage rate for their craft in the locality;

- (3) Securing wage bonds to protect employees' wages and fringe benefits when involved in construction or the extraction and transportation of minerals, where the employer has not conducted business in the State for at least five consecutive years;
- (4) Licensing contractors, through which wage bonds, tax registration, and workers compensation registrations are verified;
- (5) Providing arbitration, mediation, and conciliation services when requested by both labor and management representatives;
- (6) Protecting employees and prospective employees against the use of polygraph examinations.
- (7) Verifying the legal employment status of workers in West Virginia.

**The Division of Labor promotes prosperity for West Virginians through enforcing laws governing weights and measures to assure:**

- (1) That every product bought or sold by weight or measure is labeled and properly offered for sale;
- (2) That licensing and labeling requirements are met for bedding and upholstered furniture to assure sanitation;
- (3) Protection of consumers from deceptive practices and businesses from unfair competition through enforcing the laws governing closing - out sales, fire sales, and defunct business sales;
- (4) Cooperation with the United States Consumer Product Safety Commission to protect the public from hazardous products;

## **B. ORGANIZATION**

The Division of Labor is organized into an Administrative section, and four service sections. The specific service sections of the Division are: (1) Wage and Hour, (2) Weights and Measures, (3) Safety, Boiler, Elevator Safety and Amusement Ride Inspection, (4) Licensing. The responsibilities of each section are mandated by statute, with compliance officers providing enforcement.

The Wage and Hour section enforces the Wage Payment and Collection Act, including its wage bonding provision, the Wage for Construction of Public Improvements Act, the Minimum Wage and Maximum Hours Act, Equal Pay for Equal Work Act, the Child Labor Act, the Parental Leave Act, the Industrial Homework Act, the Nurse Overtime and Patient Safety Act and verifies the legal employment status of workers.

The Weights and Measures section enforces the Weights and Measures Act and the Closing-out and Defunct Business Sales Act.

The Safety, Boiler, Elevator Safety and Amusement Rides Inspection section provides safety consultation services through agreement with the Federal Occupational Safety and Health Administration, inspects and certifies all high pressure boilers, enforces the West Virginia Occupational Safety and Health Act, which applies to public employees , provides for the safety inspection and examination of elevators, escalators and other lifting and lowering devices which run between fixed guides and rails in the state, licenses elevator mechanics and registers elevator apprentices and inspects Amusement Rides and Amusement Attractions in the state.

The Licensing section enforces the West Virginia Manufactured Housing Construction and Safety Standards Act, the Crane Operator Certification Act, the Contractor Licensing Act and the Supervision of Plumbing Work Act.

## **C. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

It is the policy of the Commissioner of Labor and the West Virginia Division of Labor to assure equal opportunity to all employees and applicants for employment. The Division will enforce policies and procedures which assure personnel actions, including, but not limited to, recruitment, selection, promotions, benefits, leave, and training, are based on merit and ability without regard to race, sex, national origin, disability, age, veteran status, political affiliation or other factors unrelated to ability and job performance.

Additionally, Division employees are guaranteed a workplace free of discrimination and harassment, including sexual harassment. Appropriate disciplinary actions will be taken toward violators of any of the policies included in the Division's Equal Employment Opportunity Plan.

The Commissioner of Labor and the Division's Equal Employment Opportunity Counselor are located in the Capitol Complex, Building Six, Room B-749, Charleston, West Virginia 25305, and can be reached by phone at (304) 558-7890. Division Directors are responsible for application of the policies in their respective divisions.

This Plan is effective for one year periods beginning on May 1 and ending April 30 of the following year. The Plan is updated in April of each subsequent year.

The Division of Labor, with the adoption of an Equal Employment Opportunity Plan, assures full compliance with all applicable federal, state and local laws relating to equal employment opportunity, affirmative action and nondiscrimination in public service. Management performance relating to the success of the Division's Equal Employment Opportunity Plan will be evaluated in the same manner as other Division objectives and policies, and corrective actions will be taken as needed to assure success of the Plan.

## **II. WORKING SECTIONS**

### **A. ADMINISTRATION SECTION**

The Administration Section of the West Virginia Division of Labor manages the Division by providing policy, decisions, fiscal control, personnel administration, public information, and necessary support services for the operation sections.

Major objectives of the Administration Section are to: improve the quality of supervision; improve quality and quantity of training; continue efforts to reduce expenditures by establishing and exercising better fiscal controls, policies and communication.

### **B. WAGE AND HOUR SECTION**

#### **1. OVERVIEW**

The Wage and Hour section enforces the Wage Payment and Collection Act with its wage bonding provisions, the Minimum Wage and the Maximum Hours Act, the Wages for Construction of Public Improvements Act (more commonly referred to as the “Prevailing Wage Law”), the Child Labor Act, regulates Employment Agencies, and enforces the Parental Leave Act, the Equal Pay Act, the Industrial Homework Act, the Nurse Overtime and Patient Safety Act and verifies the legal employment status of workers.

#### **2. WAGE PAYMENT AND COLLECTION ACT (W.Va. Code 21-5-1)**

The Wage Payment and Collection Act requires the payment of wages and fringe benefits within 72 hours to employees who are discharged, and requires that employees who quit or are laid off be paid by the next regular payday. The Act also requires that, with the exception of those who have been doing business in this State for over 5 consecutive years, companies engaged in construction work, or the severance, production or transportation of minerals, must furnish a bond to protect the wages and benefits of employees.

In 1983, The Wage Payment and Collection Act was amended to include the regulation of polygraph examiners. This section prohibits employers from requiring, requesting or knowingly subjecting any employee or prospective employee to submit to a polygraph, lie detector or other similar test. Exceptions are provided for law-enforcement agencies, military forces of this state and employees lawfully authorized to manufacture, distribute or dispense drugs. Polygraph examiners are required to be tested and licensed by the Division of Labor.

#### **3. MINIMUM WAGE AND MAXIMUM HOURS ACT (W.Va. Code 21-5C-1)**

The Minimum Wage and Maximum Hours Act requires employers to pay a minimum wage of \$7.25 per hour to employees, and to pay overtime at a rate of 1 1/2 times the regular hourly rate of pay for all hours worked in excess of 40 hours in one workweek.

#### **4. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS ACT (W.Va. Code 21-5A-1)**

The Wages for Construction of Public Improvements Act, commonly referred to as the “Prevailing Wage Law”, requires public authorities constructing public improvements to pay wage rates as determined by the Commissioner annually to be prevailing in that area of the State.

In determining the prevailing wage rates, a survey is conducted annually for each of the fifty-five counties in West Virginia. Information is solicited from public authorities and contractor - union and non-union alike. The data is analyzed, and the rates are determined separately for each county in the various work classifications based upon the rate paid the majority of workers.

#### **5. CHILD LABOR ACT (W.Va. Code 21-6-1)**

For teenagers who want to work, the Child Labor Act requires that minors 14 and 15 years of age obtain work permits, and those 16 and 17 years of age (if the employer requests) obtain certificates from the Boards of Education in the counties in which they live. A copy of each permit is received, approved or rejected, and filed with the Wage and Hour Section. Whenever problems or questions arise as to the safety of a minor in a particular job, or compliance within the Act, the section investigates. The act has not been amended in over twenty years and most Provisions have not been updated in sixty years.

#### **6. PRIVATE EMPLOYMENT AGENCIES (W.Va. Code 21-2-4)**

Any Private Employment Agency seeking to do business in West Virginia must be investigated and approved by the Section before a license can be issued by the West Virginia Department of Tax and Revenue.

#### **7. THE PARENTAL LEAVE ACT (W.Va. Code 21-5D-1)**

In 1989, The Parental Leave Act was enacted, and placed with the Division of Labor. The Act provides that all full-time state government employees and employees of boards of education, who have been on the job 12 consecutive weeks or longer, are entitled to 12 weeks of unpaid family leave when certain conditions occur within the family structure. Leave shall be granted at the birth of a child of an employees, the placement of a child by adoption, or if an employee must care for a son, daughter, spouse, parent or dependent who has a serious health condition. Following completion of family leave, the employee must be returned to his or her former position

#### **8. NURSE OVERTIME AND PATIENT SAFETY ACT (W.Va Code 21-5F)**

Provides requirements and limitations for mandatory nurse overtime covered in hospitals and

under certain conditions limits number of hours a nurse may work in a day in order to reduce the workplace stress and long hours of health care workers, that in turn safeguards the health and general well-being of the persons under their care.

## **9. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS (W.Va Code 21-1B)**

The legislature finds that employers have the responsibility to verify the legal employment status of all persons who come into their employ and to report their employment to the appropriate governmental agencies. Employers are precluded from hiring unauthorized workers and can be penalized for doing so. Additionally, employers owe a duty to the residents of the state to uphold the intent and integrity of the general workforce due to the potential loss of revenue to the state by loss of taxes, unemployment premiums and workers' compensation premiums.

## **10. WAGE AND HOUR SECTION PERFORMANCE MEASURES**

### **a. Workload Indicators:**

- i. 867 wage bonds collected.
- ii. 520 wage bond cease and desist orders served.
- iii. 572 Request for Assistance for Wage Collection received.
- iv. 504 Prevailing wage investigations resulting in 29 violations.
- v. 202 child labor investigations conducted. 0 child labor violations found.
- vi. 372 work permits and 587 certificates of age issued.
- vii. 2,102 Undocumented Worker Inspections performed
- viii. 1,670 Notice to Produce Records served

### **b. Effective Measures**

- i. \$23,889,662 in wage bonds processed
- ii. \$348,856 unpaid wages and fringe benefits collected for 403 employees
- iii. 603 Request for Assistance for Wage Collection processed and closed.
- iii. 1,620 Notice to Produce Records satisfied

## **C. WEIGHTS AND MEASURES**

### **1. OVERVIEW**

The Weights and Measures section enforces the Weights and Measures Act (W.Va. Code 47-1-1) and issues licenses for close-out and defunct business sales, under the provisions of the Act (W.Va. Code 47-11B-1).

In assuring the citizens of West Virginia equity in the marketplace and protection of their consumer interests, the Weights and Measures Section's responsibilities include: 1) the testing and approval of

all scales, gasoline pumps, meters and other measuring devices used in commerce; 2) calibrating tank trucks and farm milk tanks; 3) operating a measurement laboratory/calibration station; 4) inspecting pre-packaged commodities being offered for sale to insure fair packaging and labeling and proper method of sale; 5) investigating complaints about short weight and measures; 6) issuing licenses for closing-out sales, fire sales or defunct business sales, and inspecting firms conducting such sales; and 7) motor fuel quality testing, i.e. testing samples of fuel to protect consumers from purchasing poor quality fuel.

Examples of weighing devices range from balances used to weigh precious metals (gold) and jewels (diamonds), to scales in grocery stores, to hopper and truck scales that weigh coal, cement, sand and gravel. Examples of measuring devices include motor fuel dispensers at service stations, large volume meters (75 to 800 gallons per minute) at distribution plants, propane delivery truck meters, and fabric measuring machines. This section also tests other types of commercial measuring devices such as timing devices.

Our net weigh compliance program checks random weight packages, such as those found in meat and produce departments, as well as standard weight packages, such as 5 pound bags of flour.

The Closing-Out Sales, Fire Sales and Defunct Business Sales Act is a program to insure that businesses desiring to terminate commercial activities at a location do so within the guidelines provided for in the state code. This program is to insure that advertising is not conducted in a manner as to mislead or defraud the public or otherwise harm the public and that those who advertise in a manner to indicate termination of activities at a location are actually doing so.

## **2. PERFORMANCE MEASURES**

- a. 25,198 Devices Tested - inspections of commercial measuring devices to insure accurate transaction in the marketplace.
- b. 1,153 Fuel Quality Testing - Samples tested to protect consumer from purchasing poor quality fuel.
- c. 2,331 Requests for Assistance—accommodated request for assistance from businesses and consumers relating to weights & measures
- d. 5,671 Standards Calibrations—Performed at the W&M Laboratory to ensure traceability to NIST.
- e. 1,049 Pricing scanners/packages—Scanned to ensure accuracy of price scanning systems.
- f. 1,625 Packaged commodities—Tested to ensure correct net weight and labeling
- g. 5 Going-out-of-business—Licenses issued and sales regulated

## **D. SAFETY, BOILER, ELEVATOR AND AMUSEMENT RIDES**

### **1. OVERVIEW**

This section provides safety consultation services through agreement with the federal Occupational Safety and Health Administration, inspects and certifies all high pressure boilers pursuant



to W.Va. Code 21-3-7, administers the notification of workplace hazardous chemicals pursuant to W.Va. Code 21-3-18, enforces the West Virginia Occupational Safety and Health Act, W.Va. Code 21-3A-1, applicable to public employees, enforces and administers the Elevator Safety Act of West Virginia pursuant to W.Va. Code 21-3C-1, and enforces the Amusement Rides and Amusement Attractions Safety Act pursuant to W.Va. Code 21-10-1.

## **2. SAFETY UNIT**

The Safety Unit of this section provides safety consultation services under the Federal/State On-Site Safety and Health Consultation agreement with the United States Department of Labor. Safety Consultants assist employers in the private sector in providing safe and healthful working conditions and recommending corrective measures.

Primarily, the consultation program services small businesses in the private sector, however, when requested, the section has assisted large employers in their efforts toward a safer and healthier workplace.

## **3. BOILER UNIT**

The Boiler Unit of this section is charged with the certification and licensure of high pressure steam boilers, which are boilers carrying more than 15 pounds pressure per square inch. Approximately 600 high pressure boilers are licensed to operate in West Virginia. Of these, 39 are small high pressure boilers, used in laundries, cleaners and tire shops that operate without insurance. The Boiler Unit inspects the boilers for their safe operation.

The Division of Labor's boiler inspector undergoes annual review of qualifications and inspection performance and provides oversight of the commissioned insurance inspectors to ensure consistent and quality inspections and adherence to State Code and National Board of Boiler and Pressure Vessel Inspectors Code.

## **4. ELEVATOR SAFETY UNIT**

The Elevator Safety's objectives are to provide for the safety, inspection and examination of all passenger elevators and escalators in the State and the issuance of a Certificate of Operation after determining that an elevator has been inspected and deemed safe for operation. Beginning January 1, 2010, the Division licenses elevator mechanics and registers elevator apprentices who meet the training and experience requirements set forth in State Code.

## **5. AMUSEMENT RIDES UNIT**

The Amusement Ride Unit is charged with adopting rules relating to the installation, repair, maintenance, use, operation and inspection of amusement rides and amusement attractions.

## **6. PERFORMANCE MEASURES**

- A. Safety Unit - Consultation Program
  - i. 265 Consultations to identify safety/health hazards
  - ii. 96.5% Consultations in small establishments
  - iii. 99% Consultations with workers consulted
  
- B. Safety Unit— Occupational Safety and Health Program
  - i. 0% Complaints addressed with 7 days
  - ii. 50% Successfully resolved
  - iii. 100% Agency requests serviced
  
- C. Boiler Unit
  - i. 638 Boiler Inspections
  - ii. 603 Boilers passing safety inspections
  - iii. 35 Boilers rejected for safety violations
  
- D. Elevator Safety Unit
  - i. 4,178 Elevator devices inspected for safety requirements
  - ii. 3,985 Elevator devices passing safety inspections
  - iii. 318 Elevator mechanics licensed
  - Iv. 16 Apprentices registered.
  
- E. Amusement Rides Unit
  - i. 931 Rides/Attractions inspected for Safety Requirements
  - ii. 931 Rides/Attractions passing safety inspections
  - iii. 8 Cease and Desist orders issued for violation of registration requirements
  - iv. 3 Criminal complaints filed with Magistrate Courts for violations of State Code

## **E. LICENSING**

### **1. OVERVIEW**

The Licensing section enforces the Manufactured Housing Construction and Safety Standards Act, The Contractor Licensing Act, The Crane Operator Certification Act and the Supervision of Plumbing Work Act.

### **1. MANUFACTURED HOUSING ACT (W.Va. Code 21-9-1)**

Through the adoption, administration and enforcement of the manufactured home construction and safety standards, this section provides for the safety and protection of consumers purchasing manufactured homes by the enforcement of Federal HUD Code Manufactured Home

Construction and Safety Standards and the West Virginia Manufactured Housing Construction Standards.

It provides administrative recourse to all consumers of manufactured homes, licenses and participates in the State Manufactured Housing Recovery Fund of all manufactured housing manufacturers, dealers or contractors in the state. It performs site inspections of complaints filed by consumers and assures licensee compliance with standards and regulations by inspection audits of consumer homes.

It conducts dealer lot audits insuring product compliance with standards and regulations and conducts licensees disciplinary hearings to insure consumer effective recourse.

## **2. CONTRACTOR LICENSING ACT (W.Va. Code 21-11-1)**

The Contractors Licensing Act requires that all construction contractors working in this state be licensed. The licensing procedure also ensures proper registration with the West Virginia Department of Tax and Revenue, the Bureau of Employment Programs and the posting of a proper wage bond. The Division of Labor provides a compliance inspection review program, incorporating routine field inspection and a Charleston-based office administration.

## **3. CRANE OPERATOR CERTIFICATION ACT (W. Va. Code 21-3D-1)**

The West Virginia Crane Operator Certification Act was passed into law as a workplace safety measure affecting primarily the construction industry. Crane operators must be examined and certified as being properly trained and qualified to safely operate a mobile crane.

## **4. SUPERVISION OF PLUMBING WORK ACT (W.Va. Code 21-141z0)**

The West Virginia Supervision of Plumbing Work Act was passed into law to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform plumbing through testing and licensure.

## **5. PERFORMANCE MEASURES**

- i. 99 Manufactured Housing Consumer complaint inspections
- ii. 20 Manufactured Housing Dealer lot and installation audits performed
- iii. 188 Manufactured Housing Letters of correction and violations issued
- iv. 15 Manufactured homes repaired by Trust Recovery Fund
- v. 6,240 Contractor License Inspections Conducted
- vi. 681 Contractor Cease and Desist Orders Issued
- vii. 146 Crane Certification Inspections Conducted
- viii. 20 Crane Cease and Desist Orders Issued
- ix. 560 Plumber Certification Inspections Conducted
- x. 94 Plumber Cease and Desist Orders Issued